

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

CRIMINAL APPEAL No.1263 OF 2004

Jayaraman

... Appellant

Vs.

State, rep.by
S.H.O., Reddichavadi P.S.,
through the Public Prosecutor,
Chennai.
(Crime No.55/2001)

.... Respondent

* * *

Criminal Appeal preferred under Section 374(2) Cr.P.C. as against the judgment of conviction dated 11.4.2003 rendered in Sessions Case No.208 of 2002 by the learned Principal Sessions Judge, Cuddalore.

* * *

For appellant : Mr.M.Ammavasai
For respondent : Mr.N.R.Elango, A.P.P.

* * *

JUDGMENT

(Judgment of the Court was delivered by M.THANIKACHALAM, J.)

The appellant/sole accused was directed to face the offences under Sections 449, 392 and 302 IPC, upon the final report filed by the respondent/police, before the learned Principal Sessions Judge, Cuddalore, in Sessions Case No.208 of 2002, on the ground that the accused had committed house trespass in order to commit offences punishable with death; that pursuant to the same, with an intention to commit murder, causing stab injuries to one Pavunammal, the inmate, the accused committed her murder; that in continuation of the same, he had also removed the gold ornaments from the body of the deceased and in this view, he should be dealt with accordingly, for the above said offences.

2. The learned Principal Sessions Judge, by going through the materials, placed before him, satisfied to frame charges against the accused, in order to proceed further and taking such a decision, framed charges under Sections 449, 302 and 404 IPC, for which the accused refused to plead guilty, whereas questioned the case of the prosecution, challenging them to prove the same.

3. The prosecution, realising its burden to prove the case beyond all reasonable doubt, in order to bring home the guilt of the accused, had examined 12 witnesses, seeking aid from 23 documents, as well as 26 materials objects.

4. The evaluation of the above materials by the learned Principal Sessions Judge, Cuddalore, brought to surface, though there is no direct evidence, on the basis of the circumstantial evidence, the guilt of the accused, for committing sororicide, resulting conviction under Sections 449, 302 and 404 IPC and sentenced the accused to undergo life imprisonment and to pay a fine of Rs.1000/= in default to undergo RI for four months for the offence under Section 302 IPC; to undergo RI for five years and to pay a fine of Rs.500/= in default to undergo RI for two months for the offence under Section 449 IPC and further to undergo RI for one year and to pay a fine of Rs.500/= in default to undergo RI for one month for the offence under Section 404 IPC further ordering the sentences to run concurrently, which is impugned in this appeal.

5. The facts, necessary for the disposal of this appeal, as exposed by the prosecution:

- (a) One Tmt.Pavunammal, a resident of Melakuppam, is the mother of Kumar (P.W.2) and Suseela (P.W.3), as well as the sister of the accused. She was living in the village separately, while her son-P.W.2 was living at Lawspet, Pondicherry and her daughter-P.W.3 was living at Saidapet, Chennai.
- (b) On the fateful day, on 20/21.9.2001 midnight, somebody trespassed into the house of Pavunammal, where she was sleeping, at about 1.00 a.m., and committed murder, then removed her gold ornaments (M.Os.1 to 5) also, which she was wearing.
- (c) This fact came to the knowledge of P.W.1-the Village Administrative Officer on 21.9.2001 at about 7.00 a.m. P.W.1, ascertaining the death, preferred a complaint-Ex.P.1, which was received by P.W.10, on which basis a case was registered in Cr.No.55/2001 under Section 302 IPC, preparing the Printed FIR-Ex.P.18, submitting the original of the FIR to the Judicial Magistrate No.1, Cuddalore, marking copies to the higher authorities. The death of Pavunammal was also informed to P.Ws.2 and 3.

- (d) P.W.2, who came to the scene of crime, noticed number of cut injuries over the body of his mother, including cut injury over the ears and the removal of jewels from her person, which she was wearing.
- (e) The then Inspector of Police, Devanampattinam, Thiru Kanagaraj-P.W.11, who was in-charge of the respondent Police Station, upon receipt of the copy of FIR viz. Ex.P.18, inspected the scene of crime, taking the case for investigation, prepared observation mahazar-Ex.P.2 and sketch-Ex.P.19 at about 11.30 a.m. in the presence of P.W.5 and another.
- (f) P.W.7, at the request of the Investigating Officer, took photographs of the scene of crime-M.Os.16 to 26.
- (g) From the scene of crime, the Investigating Officer, had seized M.O.6-bloodstained earth and M.O.7-ordinary earth in the presence of the same witnesses, under the cover of Ex.P.3-mahazar. Further noticing the availability of liquor bottles-M.Os.8 and 9 in the scene of crime, they were also seized by P.W.11 under the cover of Ex.P.4-mahazar.
- (h) Then, in order to ascertain, prima facie, whether the death was due to homicidal violence or for some other reasons, the Investigating Officer conducted inquest over the body of the deceased, in the presence of the panchayatdars and witnesses and the result is incorporated in Ex.P.20-inquest report. Then, further to ascertain the actual cause of death, scientifically, the body was sent for Post Mortem with requisition. He had also examined the witnesses, recorded their statements then and there.
- (i) At that time, P.W.2, preferred Ex.P.21 complaint to P.W.11, that the jewels worn by the deceased were missing. Pursuant to the complaint, the case originally registered under Section 302 IPC was altered into Sections 302 and 380 IPC, for which, Ex.P.22 was submitted to the Court of Judicial Magistrate No.1, Cuddalore.
- (j) As requested by the Investigating Officer, upon identification of the body of Pavunammal, P.W.8, the Medical Officer attached to Cuddalore Government Hospital, conducted autopsy over the body of Pavunammal on 22.9.2001 at about 2.00 p.m., which revealed the following external and internal injuries, as recorded in Ex.P.11-Post Mortem Certificate:

"External injuries:

- 1) A lacerated injury involving right side frontal region of scalp of size 5 cm x 4 cm x 2 cm.
- 2) A lacerated injury involving posterior aspect of neck of size 6 cm x 4 cm x 3 cm.
- 3) A lacerated and cut injury involving right side

pinna of the ear and left side pinna of left ear of length 2 cm on each side.

Internal Examination:-

Thorax well formed. No fracture ribs. Heart pale. Lungs pale. Hyoid bone intact.

Abdomen: stomach empty. Liver, spleen and kidneys are pale. Intestine distended with gas. Bladder empty.

Uterus: Normal. Skull: A linear fracture involving right frontal bone of length 4 cm present. Membranes ruptured beneath the area of fracture in the right frontal bone. There is a blood collection of 100 ml.

Over the surface of the brain. Beneath the same fractured area. On dissection of Injury No.2: fracture involving C3 cervical spine present."

The Doctor also preserved the Viscera and when sent for chemical examination, Ex.P.10 report was received. The Doctor, considering the effect of the injuries and the absence of poison in the viscera, opined, in Ex.P.11, that the deceased would appear to have died of shock and hemorrhage due to multiple injuries sustained, 33-37 hours prior to Post-Mortem.

- (k) Thereafter, on the basis of investigation and upon information, fixing the accused, P.W.11 arrested the accused on 22.9.2001 at about 7.00 a.m. at the road junction of Nallathur. When, in the presence of P.W.6 and another, P.W.11 examined the accused, he confessed, under Ex.P.7, conceding the concealment of weapon, as well as the jewels removed from the body of Pavunammal.
- (l) Pursuant to Ex.P.7, the accused took the witnesses and the Investigating Officer to the backside of his house and took out from the manure pit, M.O.14-knife, which was seized by P.W.11 under the cover of Ex.P.8, in which, the witnesses have also signed, at about 9.00 a.m.
- (m) Thereafter, the accused showing the bush near a banyan tree, has taken out M.Os.1 to 5, which were in M.O.15 and they were recovered, under the cover of mahazar-Ex.P.9, by P.W.11 in the presence of P.W.6.
- (n) Thus completing the seizure and recovery, P.W.11- Investigating Officer brought the accused and the articles to the Police Station and noticing bloodstains in the T-Shirt (M.O.10) and lungi (M.O.11) worn by the accused, they were seized under Ex.P.5.
- (o) Further investigation revealed that the accused was convicted in Sessions Case No.13 of 1996, dated 21.7.1997, on the file of the Additional Sessions Court, Cuddalore, sentenced to life imprisonment for the offence under Section 302 r/w.149 IPC (4 counts) as per the judgment under Ex.P.23 and during the relevant time of incident, he

was on bail. Therefore, the case was converted under Section 303 IPC.

- (p) At the request of the police, P.Ws.2 and 3 have identified the jewels M.Os.1 to 5 recovered from the accused, on the basis of his confession before the police, thereby showing that the accused alone should have committed the murder of the deceased and removed the jewels. Then and there, the Investigating Officer examined the witnesses and recorded their statements. The properties, recovered during the investigation, were also submitted to the Court concerned and P.W.11 has also given request for sending the material objects for chemical analysis under Ex.P.14.
- (q) P.W.11, who was in charge of Reddichavadi police station, and conducted the investigation, handed over the investigation, on the return of the regular Inspector of Police-P.W.12. P.W.12 has also examined same witnesses but not recorded any separate statements, since all the witnesses have given the statements as given before P.W.11.
- (r) As requested by the Investigating Officers under Exs.P.12 and P.14, material objects submitted to the Court were sent for chemical analysis, with the covering letters under Exs.P.13 and P.15, resulting the reports under Exs.P.16 and P.17. The materials, so collected and the statements recorded during the investigation including the recovery of jewels belonging to the deceased at the instance of the accused, revealed that the accused alone should have committed the offence, ruling out the possibility of others and in this view, a final report came to be filed.

6. The learned Principal Sessions Judge, Cuddalore, repelling the defence projected, as if this case was foisted against the accused due to previous enmity, considering the confession statement which led to the recovery of M.Os.1 to 5 belonged to the deceased, as identified by P.Ws.2 and 3, for which there is no legally acceptable explanation, felt, that the accused alone should have committed trespass into the house of Pavunamal, terminated her life prematurely and in order to misappropriate dishonestly, should have removed the jewels also. In this view, the accused was convicted and sentenced, as said above, which is under challenge.

7. Heard Mr.M.Ammavasai, learned counsel for the appellant and Mr.N.R.Elango, the learned Additional Public Prosecutor for the respondent/State.

8. The learned counsel appearing for the accused/appellant argued that the conviction is not at all based upon any legally admissible evidence, whereas it is purely based upon unbelievable circumstantial evidence and in this view, it should go. It is the further submission of the learned counsel that the confession

statement, said to have been given by the accused, the alleged recovery, pursuant to the confession, are all make belief affairs, not proved to the satisfaction of the Court whereas upon presumption alone, conviction, followed by sentence, was slapped, which should not be allowed to sustain/remain. Finally, the learned counsel for the appellant argued that the accused/appellant was falsely implicated in a criminal case along with one Durai, son of the deceased, and others, where he was acquitted finally and in view of this enmity, at the instance of the interested person in that case, a false case (this case) came to be filed against the appellant, which should be rejected.

9. We have heard Mr.N.R.Elango, the learned Additional Public Prosecutor for the respondent, on the above points.

10. Mr.N.R.Elango, the learned Additional Public Prosecutor, supporting the well-reasoned judgment of the trial Court, according to him, argued that no reason has been made out by the defence, to disbelieve the confession, recovery and no explanation was offered by the accused for the possession of the jewels belonged to the deceased soon after the occurrence, as well for the bloodstains in his dress, which is the same group of the deceased and because of these reasons, a presumption should be drawn, as available under the Evidence Act, as if the accused alone should have committed the murder, which was rightly drawn by the trial Court, not liable to be rejected, whereas it should receive the seal of affirmation of this Court.

11. On 20/21.9.2001, during mid-night, Pavunammal was murdered in her house, at Melakupam, which is not seriously challenged. The Doctor also certified and opined, in Ex.P.11, that Pavunammal succumbed to the injuries sustained by her, thereby showing, it is a homicidal violence, ruling out the possibility of any other cause for the death, which is also not challenged. Thus, it is to be concluded that Pavunammal was murdered for gain on 20/21.9.2001 during night night i.e. at 1.00 a.m. or so. सत्यमेव जयते

12. Admittedly, none had seen the incident, even the presence of the accused nearby the scene of crime or in and around on the fateful day, as per the evidence available on record. P.W.4 is the wife of the accused. The accused and the deceased are living side by side. The house of the accused is on the Eastern side of the house of the deceased. Though, it seems, P.W.4 had been examined, to prove the acts of the accused, connecting with the crime, she deposed nothing and in fact, she deposed that she did not know how Pavunammal died, thereby receiving the seal of 'hostile witness'. P.Ws.2 and 3 came to the village, where the incident had taken place, only upon information. Therefore, practically, as rightly submitted by the learned counsel for the appellant, there is nil evidence, direct in

nature, to connect the accused with the crime. Taking advantage of the same and attempting to eclipse the circumstantial evidence, relied on by the prosecution, an argument was advanced, on behalf of the appellant/accused, that the conviction of the appellant is illegal and unsustainable, for which we are unable to agree, considering the proved confession, proved recovery to our satisfaction, as well as the connection of the accused with the crime, by proving the presence of the blood, which is of the same group of the deceased, in the dress worn by the accused, which were also recovered from his person, though challenged, not erased, in our deep consideration.

13. There could be no second opinion, as the law is well settled by the Apex Court, that relying upon circumstantial evidence is more safe, than the ocular evidence of the witnesses, who are bound to change their colours, whereas the circumstances will not lie, provided the circumstances, so relied, are proved clinchingly, without allowing any doubt to crept in, leading to the only presumption, that the hands of the accused alone should have involved, ruling out the possibilities of others hand. Here, the circumstances relied on by the prosecution are:

- (i) that the accused, being the neighbour and brother, should have entered or trespassed into the house of Pavunammal and committed her murder, followed by theft;
- (ii) that the jewels or the ornaments worn by the deceased were recovered, pursuant to the confession of the accused alone, soon after the occurrence, for which there is no explanation at all from the accused, except the total unacceptable denial; and
- (iii) that in the dress worn by the deceased, as per the serology report, the presence of the blood of the group of the deceased was noticed, thereby indicating, at the time of the accused attacking the deceased, the blood of the deceased should have stained the dress of the accused.

14. If these circumstances are proved, especially (ii) and (iii), then, if no explanation is coming forth from the accused, the presumption of commission of theft of ornaments by the accused, by removing the same from the person viz. Pavunammal, after committing her murder, could easily be inferred, as contemplated under Illustration (a) to Section 114 of the Evidence Act, as ruled by the Apex Court in LIMBAJI AND OTHERS vs. STATE OF MAHARASHTRA (2002 SCC (Cri) 1044), in addition to another decision of the Apex Court EZHIL AND OTHERS vs. STATE OF T.N. [(2002) 9 SCC 189] and GEORGE vs. STATE OF KERALA [(2002) 4 SCC 475], wherein it is held 'the finding of possession of the ornaments preceded by robbery where it is established that the recovery is soon after, Illustration (a) to Section 114 of the Evidence Act could be invoked.

15. Section 114 and Illustration (a) to it, of the Evidence Act read:

"114. Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations:-

The Court may presume

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he accounts for his possession;"

In case, the ingredients for the above provisions are made out, then, the exception to Section 101, as enunciated in Section 106 of the Evidence Act, comes into operation which reads:

"106. Burden of proving fact especially within knowledge - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

Therefore, it is for the prosecution, to discharge the initial burden of establishing, the guilt of the accused beyond all reasonable doubt, then taking the aid of Section 106, which is exception to Section 101 of the Evidence Act.

16. In LIMBAJI AND OTHERS vs. STATE OF MAHARASHTRA (2002 SCC (Cri) 1044), the Apex Court has held that

"under Section 114 Illustration (a), the presumption of commission of offence of robbery or murder or both can be extended under the main part of Section 114 of the Evidence Act, if it is part of the same transaction."

17. In EZHIL AND OTHERS vs. STATE OF T.N. [(2002) 9 SCC 189], it is held by the Apex Court,

"To draw the presumption under Section 114 Illustration (a), the possession of deceased's articles by accused must be recent, since time fact being important, considering the words available in Section 114 Illustration (a) 'soon after'."

Thus holding, it is further held

"When such possession of the articles by accused found to

be very much proximate in point of time to the death of the deceased, constituting the whole thing an integrated affair and when the accused is unable to properly and reasonably explained as to the legitimacy or origin of the articles, the possession of the articles owned and possessed by the deceased, it can be reasonably inferred or presumed that the accused/appellant had not only committed murder of the deceased, but also committed robbery of the articles found in possession of the deceased"

This principle should be squarely applicable to the facts of the present case, provided, the ingredients are satisfied. Therefore, we have to see, the recovery of the ornaments as well as the recovery of the bloodstained dress worn by the accused and the blood group available therein.

18. As seen from Ex.P.11-Post Mortem Certificate, the deceased had sustained four external injuries, oozing blood also. Therefore, if a person had inflicted the injuries, narrated in Ex.P.11, certainly, the dress worn by him, at the time of the incident, also should have stained, because of splash of the blood, in the ordinary course. The accused was arrested, as per the evidence given by the Investigating Officer, on 22.9.2001 at 7.00 a.m. at Nellathur junction. The incident had taken place on 20/21.9.2001 and the same was informed to the police on 21.9.2001 at about 10.00 a.m. Within 24 hours, as spoken to by P.W.11, the accused was arrested on 22.9.2001 at about 7.00 a.m., which should come within the meaning of "soon after", as contemplated under Illustration (a) to Section 114 of the Evidence Act. Pursuant to Ex.P.7, which we will discuss infra, after seizure of certain articles, the accused was brought to police station at about 10.00 a.m. on the same day viz. on 22.9.2001. The Investigating Officer, noticing the bloodstains in the white T-shirt viz. M.O.10 and lungi-M.O.11 worn by the accused, seized them from the person of the accused, under Ex.P.5. The evidence, so given by the Investigating Officer-P.W.11, regarding the recovery of M.Os.10 and 11, under Ex.P.5, is not at all challenged, though the recovery of jewels was challenged, including the confession.

19. It is the evidence of P.W.11, that M.Os.10 and 11 were seized in the presence of P.W.5. P.W.5 also had specifically stated about the seizure of M.Os.10 and 11 on 22.9.2001 at about 10.30 a.m., identifying M.Os.10 and 11, as if they were seized from the person of the accused. This evidence, given by P.W.5, regarding the seizure of M.Os.10 and 11, also was not challenged.

20. When the accused was examined under Section 313 Cr.P.C., as seen from Question No.26, regarding the seizure of T-shirt and lungi under Ex.P.5, he has not explained, denying or disowning those dresses, though he would state that it is a false evidence. It may

be the case of the defence that the evidence given by P.W.11 may be false, but it is not case that M.Os.10 and 11 does not belong to the accused. In the absence of any such explanation for Question No.26, as well as the absence of denial of recovery of M.Os.10 and 11, we are constrained to hold that these two items belong to the accused, which does contain bloodstains.

21. M.Os.10 and 11, along with other items, have been sent for chemical examination, as well as blood grouping. As seen from Ex.P.16, in M.Os.10 and 11, which are noted as Items 4 and 5, the Department of Forensic had detected the blood. Further examination revealed, as seen from Ex.P.17, that M.O.10-T-shirt contains human blood and lungi-M.O.11 contains human blood of 'B' group, which is not under challenge.

22. P.W.5-Devaraju is the resident of Melakuppam. He would state that on 22.9.2001 at about 5.00 p.m., M.O.12-sari and M.O.13 petticoat of the deceased were handed over by the police Constable to the Investigating Officer and they were seized in his presence under Ex.P.6. In Ex.P.6 also, it is specifically stated that the sari and petticoat were handed over by the Police Constable Mr.K.Selvaraj to the Inspector of Police, which were seized from the body of the deceased, probably after post-mortem. This document is also not challenged. The above said material objects, in addition to other material objects, were submitted to the Court and only through Court, as spoken to by P.W.9, they were sent for chemical examination, as well as for blood grouping. Exs.P.16 and P.17 would indicate that the sari and petticoat contained human 'B' group blood i.e. the blood group of the deceased Pavunambal. The above said blood group also not challenged. From the above narrated facts, it is seen that the dress worn by the accused viz. T-shirt and lungi does contain the blood group of the deceased, which is not explained otherwise. Therefore, a presumption has to be drawn, that because of the fact, the accused was wearing lungi M.O.10, it stained with blood of deceased during the assault and in this view, we are constrained to hold that the accused alone should have trespassed into the house of the deceased, assaulted her, causing cut injuries, terminating her life. Thus, one of the circumstances, relied on by the prosecution, is well proved beyond all reasonable doubt. Next we have to see, whether the jewels-M.Os.1 to 5, said to belonged to the deceased, were worn by the deceased, if so whether those articles have been recovered at the instance of the accused, giving confession statement, leading to the recovery.

23. The learned counsel appearing for the accused/appellant argued that there are contradictions and discrepancies in the evidence of the recovery witness as well as in the evidence given by the Investigating Officer and therefore, believing the evidence given by those two, it may not be safe to come to the conclusion that the

confession was proved or pursuant to the confession, recovery was effected. Law is well settled that it is not every contradiction that renders witness or evidence tendered by him unacceptable or tainted so as to call for the rejection in toto. The commission or omission would depend upon its nature such as, whether they are vital in character or flimsy in nature, occurred due to fading of memory or had occurred while describing the incidence, unable to say the incident cogently etc.

24. During the cross-examination, from P.W.6, it was elicited that in the jewels recovered, pursuant to the confession, there were bloodstains. But, the Investigating Officer would state, no bloodstains in M.Os.1 to 5. Magnifying this contradiction, an attempt was made on the part of the appellant to say, that the recovery itself must be false, which we disagree. Whether there were bloodstains in M.Os.1 to 5 or not, it is not a vital matter to decide whether those material objects have been recovered pursuant to the confession given by the accused or whether they belong to the deceased or not. Therefore, ignoring this so-called contradiction, we have to scan the materials.

25. The proper persons who can identify the jewels worn by the deceased are her son and daughter, who have been examined as P.Ws.2 and 3. P.W.2, giving description of the jewels viz. M.Os.1 to 5, would state that they belonged to his mother. He further says, when he visited the house, after receiving the information about the death of his mother, the above articles were found missing, which is the case of P.W.3 also, being the daughter of the deceased. When both of them have spoken that M.Os.1 to 5 belonged to their mother, the same is not effectively erased, since only a suggestion was thrown to them, as if M.Os.1 to 5 does not belong to the deceased and they were prepared for the purpose of this case. We do not find any acceptable reason to conclude that P.Ws.2 and 3 should have prepared or purchased M.Os.1 to 5 to implicate the accused, as if he had committed the theft of jewels belong to the deceased Pavunammal. P.W.2 also preferred the complaint, immediately, when he came to know about the missing of those ornaments. In this view of the matter, we conclude that M.Os.1 to 5 belonged to the deceased Pavunammal and in fact, M.O.4 must have been in her ears also and if at all that should have been removed by tearing the ear lobe, as indicated in the post-mortem certificate itself. Having reached the conclusion, that M.Os.1 to 5 belonged to the deceased Pavunammal, now we have to see how they went to the hands of the accused and how they were recovered from him on the basis of the confession statement given by him etc.

26. The learned counsel for the appellant would submit that the arrest, confession and recovery should be doubted since in those documents, local witnesses have not attested, for which we are unable

to subscribe our view. P.W.6 was working as the Village Administrative Officer at Thookanambakkam, at the time of the incident. He should have no motive either to implicate the accused or to support the case of the prosecution, though an unfounded argument was advanced as if all the Village Administrative Officers are supporting the police, being their henchmen or something like that, without any materials, which is unwarranted also.

27. P.W.6 categorically stated before the trial Court that when he had been to Nallathur Melakuppam, in connection with his official duties, he had noticed Thookanambakkam police, examining the accused and the voluntary confession given by him, pointing out Ex.P.7-admissible portion. Without any contradictions or omissions, the person, who recorded the confession statement-P.W.11 also testified before the trial Court. By going through the evidence very carefully, we are also unable to find any acceptable reason, to puncture the well-netted evidence given by both P.Ws.6 and 11. It is the further evidence of P.Ws.6 and 11 that pursuant to Ex.P.7, the accused took out M.O.15 polythene bag from a bush under a banyan tree, in which M.Os.1 to 5 were available, which were recovered under Ex.P.9. By going through Ex.P.9 as well as the oral evidence of P.Ws.6 and 11 and analysing the answers elicited during their cross-examination also, it is very difficult and hard to disbelieve the evidence given by these witnesses. Hence, accepting the evidence of P.Ws.6 and 11, we conclude as did by the trial Court, that M.Os.1 to 5, which belonged to Pavunammal, were recovered only from the custody of the accused pursuant to the confession statement given by him under Ex.P.7, thereby satisfying the recovery of jewels as well as the ingredients of Section 114 Illustration (a) of the Evidence Act. In view of the above said conclusion, it is now for the accused to explain, legally, how he came into possession of M.Os.1 to 5, for which admittedly, there is no explanation. Under the above said circumstances, as ruled by the Apex Court, as per the judgments quoted supra, it is to be held that the accused alone should have trespassed into the house of the deceased in order to commit the offence, thereby proving the ingredients required under Sections 449, 404 in addition to 302 IPC. Thus, the prosecution has proved its case, beyond all reasonable doubts, completing the chain, as expected by law, in a case of circumstantial evidence ruling out the involvement of any other hands also.

28. The trial Court, considering all the facts and circumstances of the case, has rightly held that the offences reported against the accused are proved beyond all reasonable doubt, in which we are unable to find any infirmity, in the light of the reasons assigned by us also supra.

29. For these reasons, the appeal deserves to be dismissed and accordingly, this Criminal Appeal is dismissed, confirming the

conviction and sentence passed against the appellant/accused by the learned Principal Sessions Judge, Cuddalore in Sessions Case No.208 of 2002, dated 11.4.2003.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Rao

To

1.The Principal Sessions Judge,
Cuddalore.

2.The District Collector,
Cuddalore.

3.The Superintendent of Police,
Cuddalore.

4.The Superintendent,
Central Prison,
Cuddalore.

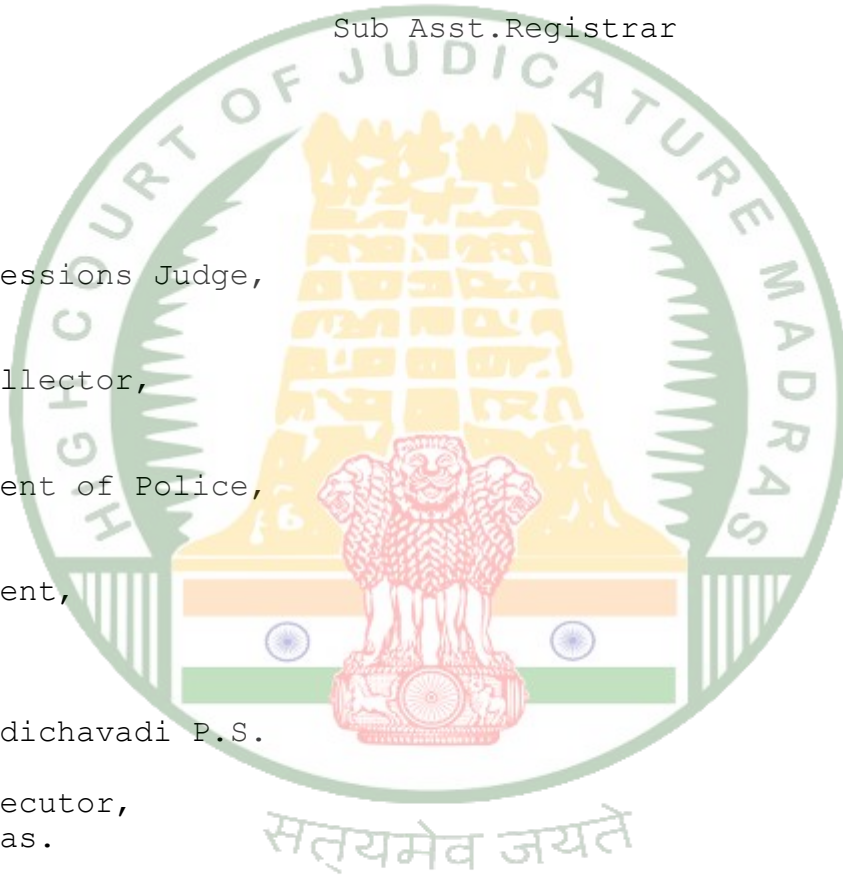
5.The S.H.O., Reddichavadi P.S.

6.The Public Prosecutor,
High Court,Madras.

7.The Director General of Police,
Chennai 600 004.

+2ccs to Mr.M.Ammavasai,Advocate Sr 48845

PV (CO)
km/13.11.



WEB COPY

Cr1.A.No.1263/2004